

47. SHADE TREE DISEASE CONTROL

47.01. Nuisance Declared. The prevention, control and abatement of Dutch elm disease and Oak Wilt is necessary for the protection, preservation and conservation of public and private lands and the investment and benefit therein, and to protect and promote the general welfare of the public and this community. Therefore, the following conditions are hereby found and declared to be a public nuisance wherever they exist in the city.

(1) Any living or dead elm tree or part thereof infected to any degree with the Dutch elm disease fungus, *ceratocystis ulmi* (buisman) mureau, or which harbors any of the elm bark beetles, *scolytus multistriatus* (bich.) or *hylurgopinus rufipes* (marsh.).

(2) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or burned.

(3) Any living or dead oak tree or part thereof infected to any degree with the oak wilt fungus (*ceratocystis fagacearum*).

47.02. Prohibition. No person shall permit any public nuisance as defined in 47.01 to remain on any premises owned or controlled by such person within the city. Such nuisance may be abated in the manner prescribed by this chapter.

47.03. Park Board Responsibility. The board of park commissioners shall administer this chapter and said board and the officers and employees of the Park and Recreation Department are authorized, empowered and directed to take all action and perform all duties prescribed by this chapter. The board of park commissioners and the officers and employees of the Park and Recreation Department are authorized and empowered to enter upon private premises at reasonable times and reasonable hours for the purpose of taking necessary action and performing the duties assigned to the board by this chapter.

47.04. Inspections. All premises and places within the city shall be inspected as often as practicable to determine whether any condition declared in 47.01 to be a public nuisance, exists thereon. All reported incidents of infection by Dutch elm fungus or the presence of elm bark beetles or infection by the oak wilt fungus shall be promptly investigated.

47.05. Abatement Generally. Subdivision 1. No action to remove, destroy and dispose or require the removal, destruction and disposal of elm trees or wood infected with Dutch elm fungus or oak trees infected by oak wilt fungus shall be taken until a reasonably certain diagnosis of the disease has been made. When such reasonably certain diagnosis has been made, the infected tree or wood shall be removed, destroyed and disposed of in a manner which will effectively destroy and prevent as fully as possible the spread of the Dutch elm or oak wilt disease fungus.

Subd. 2. Presence of Elm Bark Beetles. When the presence of elm bark beetles has been discovered in or upon any living elm tree but the presence of Dutch elm disease fungus is not then or thereafter diagnosed, the tree shall be treated in a manner which will effectively destroy and prevent as full as possible the spread of the elm bark beetle. If such treatment is not or, because of the extent of infestation, cannot be effective, the tree shall be removed, destroyed and disposed of.

Subd. 3. Dead Elm Trees, Logs, Stumps, etc. Standing dead elm trees, elm logs, branches, stumps, firewood or other raw elm material from which the bark has not been removed and which are not infected with Dutch elm disease fungus, shall have the bark removed, destroyed and disposed of or shall be treated in a manner which will effectively destroy and prevent as fully as possible the spread of the elm bark beetle. If such treatment is not effective, or, because of the extent of infestation, cannot be effective, the trees, logs, branches, stumps, firewood or other raw elm material shall be removed, destroyed and disposed of.

Subd. 4. Specifications and Procedures. The board of park commissioners shall establish specifications and procedures for the removal, destruction and disposal of trees and wood infected with Dutch elm disease fungus, for treating live elm trees infested with elm bark beetles and for removing, destroying and disposing of elm bark and treating dead elm trees, logs, branches, stumps, firewood and other raw elm material. Such specifications and procedures shall be consistent with current specifications and procedures designated or approved by the commissioner of agriculture.

47.06. Abatement on Private or Government Property. Whenever a nuisance as defined in 47.01 is found to exist on private property outside any public way in the city, or upon property owned and controlled by a governmental unit other than the city, the owner or person in control of such property shall be notified in writing by registered mail or by personal delivery, that such condition exists. The notice shall also state that if such nuisance is not abated by the owner or person in control of such property within 10 days after receipt of such notice, in the manner prescribed by the board of park commissioners, the city by and through its board of park commissioners may enter upon the premises and abate the nuisance.

If the owner or person in control of any private premises upon which such a nuisance exists does not abate or eliminate the same within 10 days after receipt of notification, the board of park commissioners, its officers, employees and agents shall proceed to have such nuisance properly abated or eliminated.

47.07. Abatement on City Property. Nuisances as defined in 47.01 which exist upon property owned or controlled by the city, including public street right-of-way, shall be abated or eliminated by the board of park commissioners forthwith in accordance with established specifications and procedures.

47.08. Cost of Abatement. If pursuant to section 47.06 the board of park commissioners orders the removal or abatement of such nuisance, the board shall report the cost of the removal or abatement to the council and the expense thereof shall be assessed by the council upon the lot or lots on which the nuisance was located, notice being first given by publication in the official paper of the time and place such assessment will be made. The assessment procedure shall be as prescribed by Minnesota Statutes, section 429.101 and said assessment shall be a lien on the lot or lots and shall be returned with and collected in the same manner as other city taxes.

47.09. Transporting of Elm Wood. No person shall transport within the city any bark bearing elm wood without having obtained a permit from the board of park commissioners. The board of park commissioners shall grant such permits only when the purposes of this chapter shall not be impaired or adversely affected.

47.10. Interference. No person shall prevent, delay or interfere with the board of park commissioners or the officers and employees of the Park and Recreation Department of the city

while they are engaged in the performance of duties imposed by this chapter.

47.11. Violation. Failure of any owner or person in control of private property to abate or eliminate on such property a nuisance as defined in this chapter shall not constitute a violation of this chapter.

(1396, 12/10/67; 1652, 4/18/72; 2585, 4/5/88)